

BETA TEST AGREEMENT

This Beta Test Agreement (the "Agreement") contains the terms and conditions on which Banner Peak, Inc., a Delaware corporation ("Licensor"), provides beta versions of its product for evaluation and testing. This Agreement is entered into as of the date the user selects "I agree to the User Terms" and submits the registration form on the website. This agreement is by and between Licensor and the end user registering for an account as well as any of their employees, representatives, consultants, contractors, or agents authorized to use the software on behalf of this user ("Participant").

1. BETA PRODUCT.

The "Beta Product" means the beta version of Licensor's software delivered to Participant (in object code form only) and any media, documentation, modifications, bug fixes and other updates related to such software that Licensor may, in its sole discretion, provide to Participant.

2. LIMITED LICENSE.

Subject to the terms and conditions of this Agreement, Licensor grants to Participant the right to use a single copy of the Beta Product on a single server solely for the purpose of internally testing and evaluating the Beta Product to determine whether the Beta Product is compatible with, and useful to, Participant, and not for any commercial use, or any evaluation of the structure or design of the Beta Product, or any other form of competitive analysis, solely by Participant's employees and solely on Participant's premises.

3. LICENSE RESTRICTIONS.

Participant shall not: (a) copy or use the Beta Product except as expressly permitted by this Agreement; (b) transfer, sell, rent, lease, disclose or sublicense the Beta Product (or any portion thereof); (c) use the Beta Product (or any portion thereof) for third-party training, commercial time-sharing or service bureau use; (d) reverse engineer, disassemble, decompile or otherwise attempt to derive the source code for the Beta Product or permit any third party to do any of the foregoing; (e) modify or create any derivative works based on the Beta Product; (f) alter or remove any copyright, trademark or other protective notices contained in or on any portion of the Beta Product; or (g) use the Beta Product for any purpose other than as expressly permitted in Section 2.

4. OWNERSHIP.

The Beta Product is licensed, not sold. As between Participant and Licensor, all rights, title and interest in and to the Beta Product, any derivative works of the Beta Product, and any copies of the foregoing, including, without limitation, all intellectual property rights related thereto, will be owned by Licensor, subject only to the limited license in this Agreement. Licensor will not own any right, title or interest in or to any of the data stored in the Beta Product; provided, however, that Licensor shall have the right to use any such data on a general, anonymous basis for marketing or other commercial purposes.

5. DISCLAIMER OF WARRANTY.

THE BETA PRODUCT AND ANY RELATED SERVICES PROVIDED BY LICENSOR TO PARTICIPANT UNDER THIS AGREEMENT ARE PROVIDED "AS IS," WITHOUT

WARRANTY OF ANY KIND. LICENSOR DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT, AND ALL WARRANTIES THAT MAY ARISE FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE.

6. LICENSE TERM.

Participant's rights under this Agreement will commence on the date of first delivery of the Beta Product and will automatically terminate ninety (90) days later, unless extended by mutual written agreement of the parties. Either party may, by written notice, immediately terminate this Agreement at any time for material breach by the other party of any provision hereunder. Sections 3 through 11 of this Agreement shall survive termination of this Agreement. Upon termination, Participant will cease using, and will return to Licensor, all Beta Products, all Confidential Information and any copies of the foregoing.

7. CONFIDENTIALITY.

During the term of this Agreement, Participant will have access to information that is confidential to Licensor. "Confidential Information" means the Beta Product, performance data, test results and other information relating to the Beta Product, the terms of this Agreement and all information clearly identified as confidential, whether or not such information is disclosed to Participant during, or prior to, the term of this Agreement. Participant shall hold all Confidential Information in strict confidence during the term of this Agreement and for a period of five (5) years following the termination of this Agreement. Participant will not make Confidential Information available to any third party for any reason and will treat Confidential Information with at least the same degree of care with which Participant would treat Participant's own confidential information of a like nature, and in no case with less than a reasonable degree of care. Participant will limit the disclosure of Confidential Information to Participant's employees who have a need to know such Confidential Information and who are subject to confidentiality restrictions at least as restrictive as this Section 7. Participant will not use the Confidential Information for any purpose other than for the exercise of Participant's rights under this Agreement.

8. THIRD PARTY SOFTWARE.

The Beta Product consists of proprietary software created by or for Licensor ("Licensor Software"), as well as certain other software provided by third parties. The terms and conditions of this Agreement apply solely to the Licensor Software, and do not apply to any such third-party software. All such third-party software is licensed individually pursuant to license agreements. Participant acknowledges and agrees that Participant has been informed of these licenses and will review these licenses to understand Participant's rights and obligations under such licenses. Nothing in this Agreement limits Participant's rights under, or grants to Participant rights that supersede, the terms of the applicable third-party license agreements.

9. LIMITATION OF LIABILITY.

Other than for breach of the license restrictions and confidentiality provisions of this Agreement, in no event will either party be liable for any indirect, incidental, special, consequential, punitive or similar damages arising out of this Agreement and incurred by either party or any third party,

including, without limitation, any lost profits or lost data, whether in an action in contract or tort, even if the other party has been advised of the possibility of such damages. Licensor's liability for damages hereunder will in no event exceed Two Hundred Fifty Dollars (\$250). The parties acknowledge that the limitations of liability in this Section 9 and the allocation of risk included herein are an essential element of the bargain between the parties, without which Licensor would not have entered into this Agreement.

10. EXPORT.

Participant agrees to comply fully with all relevant export laws and regulations of the United States, and will not export, direct or transfer the Beta Product to any destination, person or entity restricted or prohibited by such laws and regulations.

11. MISCELLANEOUS.

This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior or contemporaneous discussions, proposals and agreements between the parties relating to the subject matter hereof. No amendment, modification or waiver of any provision of this Agreement will be effective unless in writing and signed by both parties. Participant acknowledges and agrees that a violation of this Agreement may cause irreparable harm to Licensor for which monetary damages would be inadequate, and, therefore, Participant acknowledges and agrees that, in addition to any other remedies provided by law, Licensor will be entitled to seek injunctive relief against any such violation. This Agreement will be governed by the laws of the State of Delaware, without reference to its conflicts of laws provisions. The parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement. This Agreement and the rights and obligations hereunder may not be assigned or delegated by Participant without the prior written consent of Licensor, and any purported assignment or delegation by Participant will be null and void. Subject to the foregoing, this Agreement will be binding upon, and inure to the benefit of, the parties and their respective successors and permitted assigns. In the event that any of the provisions of this Agreement will be held to be invalid or unenforceable, the remaining portions hereof will remain in full force and effect, and such provision will be enforced to the maximum extent possible so as to effect the intent of the parties and will be reformed to the extent necessary to make such provision valid and enforceable.